IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 52

RAYMOND R. BEST and WALTER E. BECK,

Petitioners

v.

HUMBOLDT PLACER MINING COMPANY and
DEL DE ROSIER

SUPPLEMENTAL MEMORANDUM FOR PETITIONERS

These comments are in reply to the memorandum submitted by respondents in answer to two questions posed by the Chief Justice at the oral argument of the above cause:

1. In determining the validity of a mining claim on public lands, can any fact be proved in the district court that cannot be proved in proceedings in the Department of the Interior?

We do not know of any facts that may be shown to a district court in connection with determination of the validity of an alleged mining location which could not be introduced in the administrative proceeding. The prerequisites for a valid claim are established by the mining laws of the United States, 30 U.S.C. 21 et seq., and the implementing Public Land Regulations, 43 C.F.R. Part 185, and are the same in either forum. The claimant must show that there is a valuable mineral deposit and

would apply except insofar as administrative procedure is less rigid, thus permitting the parties more latitude in presenting evidence. The evidence referred to on page 3 of respondents' memorandum, i.e., the testimony of engineers and miners familiar with the alleged locations as of June 24, 1957, would be admissible before either tribunal. This is clear from the resumes of testimony appearing in the Department of the Interior decisions cited supra.

Insofar as respondents are under the impression that just compensation would be determined by the Department of the Interior, rather than by a jury (see page 4 of respondents' memorandum), they are laboring under a misapprehension. The sole function of the Department of the Interior will be to determine the validity of the claim. The jury in the condemnation case will determine just compensation for any of respondents' claims which the Department of the Interior determines to be valid.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

STEPHEN J. POLLAK,
Assistant to the Solicitor General.

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Attorneys,
Department of Justice,
Washington 25, D.C.

JANUARY 1963.

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In an attempt to demonstrate that they would be prejudiced if the proceedings before the Bureau of Land Management are permitted to go forward, respondents argue that prior rulings of the Department of the

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Respondents,

AFFIDAVIT

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

KARL S. LANDSTROM, Director, Bureau of Land Management, United States Department of the Interior, being duly sworn, deposes and says:

That he denies affirming the statement made in the last paragraph, page 3, of the Answers by Respondents to Special Questions in the above captioned case, that "proof of a producing mine operating at a profit at the day of hearing was the only positive proof of the existence of a valid, existing mining location that would be accepted by the Department".

Signed this 21st day of December, 1962, at Washington, District of Columbia

[illegible] Mining Company and)
DEL DE ROSIER) AFFIDAVIT
)
Respondents,)

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/s/
Karl S. Landstrom
Karl S. Landstrom

SEAL

Subscribed and Sworn to before me this 21st day of December, 1962. Louis S. Hillman, Notary Public D.C. My commission expires 3/31/1967

Interior require a showing of the discovery points[1] and of a producing mine operating at a profit "at the day of hearing" (p. 3 of respondents' memorandum) as a condition to a valid claim. They contend that, since the project has been constructed and the claimed location is now under water, the necessary proof could not be produced. The short answer is that if this were the proof required by the statute and regulations, respondents would have to meet it whether the proceeding went forward before the administrative tribunal or in the courts. If it is not--and we know of no decisions which so hold--then any administrative ruling requiring such proof would be subject to reversal on judicial review.[2]

In fact, the conclusion drawn by respondents is unwarranted. It is not the practice of the Bureau of Land Management, as suggested by respondents at page 2 of their memorandum, to limit proof to the condition of the mining location as of the date of the hearing. Although we have found no case involving the validity of a mining claim on public lands condemned by the United States, the decisions of the Bureau of Land Management and the Secretary of the Interior indicate that the validity of the claim would be determined as of the date of the taking, June 24, 1957, and that all facts relevant thereto would be admissible.

The rule is a simple and reasonable one. The validity of a mineral claim is determined as of the date when the claim is placed in issue by an application for a patent, by initiation of a contest or by withdrawal of public lands from among those open to the future location of claims. For example, if an application for a mineral patent s filed,

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1/ By discovery points, we understand respondents to mean merely the physical location of the allegedly valuable minerals. Obviously, to sustain a valid claim, the minerals must be shown to have existed at the time of the taking within the area delineated by the location.

2/ Under the Act of October 5, 1962, P.L. 87-748, 76 Stat. 744, such review could be had in the same district court.

for this proposition and in no sense supports the contention for which respondents cite it. In Logomarsini, the Secretary held that before a mineral patent would be issued, the applicant must show that his claim was valuable for minerals at the time the patent application was filed and not forty years previous when the first entry was made. The fact that the claim was valuable for gold in 1909 was irrelevant to the question whether the claim was valuable for minerals some forty years later when all the gold had been mined.

Similarly, the Bureau of Land Management determines the validity of mining claims as of the date contest proceedings are filed, not the date when the hearing on the contest is held. United States v. North, A-27936; United States v. Pumice Sales Corporation, A-27578.[3/] In the same way, when public lands are withdrawn from availability for mining claims, the Bureau of Land Management determines the validity of any outstanding claims as of the date of the withdrawal order, not the subsequent date when the hearing is held. United States v. Coleman, A-28557; United States v. Riggle, A-27184; United States v. Everett, A-27010; and see Cameron v. United States, 252 U.S. 450. In all these cases, evidence that the land claimed was valuable for mining operations at the date of the patent application, the contest initiation or the withdrawal order is relevant and, accordingly, admissible.

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As indicated in the affidavit of Mr. Karl Landstrom, Director of the Bureau of Land Management, attached hereto, as well as the decided cases, the statement in the last paragraph of page 3 of respondents' memorandum with respect to the alleged statements of Mr. Landstrom is incorrect. As noted above, the cases do not require "proof of a producing mine operating at a profit at the day of hearing" or at any other time. The statute requires that the lands be valuable for mineral operations. The date as of which this value must be proved in this case is the date

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3/ Copies of these and the other unpublished opinions cited herein have been filed with the librarian of this Court.

of the taking, and the existence of a working mine is only one means of proof. More common proof consists of testimony of engineers and geologists.

2. Would any different rules of evidence apply in the two tribunals?

The answer to this question is that the same rules of evidence would apply except insofar as administrative procedure is less rigid, thus permitting the parties more latitude in presenting evidence. The evidence referred to on page 3 of respondents' memorandum, i.e., the testimony of engineers and miners familiar with the alleged locations as of June 24, 1957, would be admissible before either tribunal. This is clear from the resumes of testimony appearing in the Department of the Interior decisions cited supra.

Insofar as respondents are under the impression that just compensation would be determined by the Department of the Interior, rather than by a jury (see page 4 of respondents' memorandum), they are laboring under a misapprehension. The sole function of the Department of the Interior will be to determine the validity of the claim. The jury in the condemnation case will determine just compensation for any of respondents' claims which the Department of the Interior determines to be valid.